

Remarks

The Final Office Action dated January 21, 2009, lists the following rejections: claims 1-2, 6, 12-13 and 15 stand rejected under 35 U.S.C. § 102(e) over Erixon (U.S. Patent No. 7,233,678); claims 3-5, 7-8 and 14 stand rejected under 35 U.S.C. § 103(a) over the '678 reference; claims 9-11 stand rejected under 35 U.S.C. § 103(a) over the '678 reference in view of Clark (U.S. Patent No. 6,134,336); claim 5 stands rejected under 35 U.S.C. § 112(2); and claim 1 is rejected on the ground of nonstatutory obviousness-type double-patenting over claim 1 of U.S. Patent No. 6,628,790. In this discussion set forth below, Applicant does not acquiesce to any rejection or averment in this Office Action unless Applicant expressly indicates otherwise.

Applicant respectfully traverses the § 102(e) rejection of claims 1-2, 6, 12-13 and 15 and the § 103(a) rejections of claims 3-5, 7-11 and 14 (each of which is based on the '678 reference) because the cited portions of the '678 reference do not correspond to aspects of the claimed invention directed to a sound-delivery chamber that amplifies the sound generated by a loudspeaker. The cited teachings of the '678 reference do not mention that channel inlet 28 (*i.e.*, the asserted second duct) and sound channel 22 (*i.e.*, the asserted sound-delivery chamber) amplify the sound generated by speaker 16. In fact, the '678 reference teaches that the sound channel 22 simply passes the sound generated by the speaker 16 to the outlet 17. *See, e.g.*, Fig. 6 and Col. 6:14-20.

Moreover, Applicant submits that the '678 reference teaches away from modifying sound channel 22 into a chamber that amplifies the sound generated by speaker 16. In *KSR*, the Supreme Court looked favorably on *Adam's* treatment of teaching away stating, "when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). In this instance, the '678 reference is directed to decreasing the size of the device and, in particular, to decreasing its thickness. *See, e.g.*, Col. 3:7-25. As such, the '678 reference teaches away from modifying sound channel 22 in a manner that would increase the size of the device. *See also* M.P.E.P. § 2143.01 ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.")

In view of the above, the § 102(e) rejection of claims 1-2, 6, 12-13 and 15 and the § 103(a) rejections of claims 3-5, 7-11 and 14 are improper and Applicant requests that they be withdrawn.

Applicant respectfully traverses the § 112(2) rejection of claim 5 because claim 5 does particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 recites "a portion of the sound-delivery chamber." Antecedent basis for "a portion" is not required because it is first introduced in claim 5. Applicant notes that antecedent basis for the sound-delivery chamber can be found in claim 1. Accordingly, the § 112(2) rejection of claim 5 is improper and Applicant requests that it be withdrawn.

Applicant respectfully traverses the obviousness-type double-patenting rejection of claim 1 over claim 1 of U.S. Patent No. 6,628,790. Specifically, claim 1 of the '790 patent does not include a sound-delivery chamber to amplify the sound conveyed into the acoustic free space as in the claimed invention. Accordingly, the obviousness-type double-patenting rejection of claim 1 is improper and Applicant requests that it be withdrawn.

Applicant has added new claims 16-20, which are allowable over the cited references for at least the reasons discussed above. Applicant notes that support for claims 16-20 can be found throughout Applicant's disclosure include, for example, in Figure 2 and the related discussion in Applicant's specification.

In view of the above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063 (or the undersigned).

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